

## REMARKS

This amendment is responsive to the non-final Office Action mailed February 24, 2010. Claims 1, 4, 5, and 7-21 are pending in the application and stand rejected. Claim 1 is amended. Claims 7-21 are canceled. Claims 27-30 are added. Reconsideration and allowance of Claims 1, 4, 5, and 27-30 are respectfully requested in view of the above amendments and below remarks.

### Examiner Interview of April 7, 2010

On April 7, 2010, the undersigned attorney conferred with the Examiner regarding Claims 1, 4, and 5. Specifically, the potential for rejoinder of non-elected species was discussed and the election of species requirement was clarified. The Interview Summary sent by the Examiner on April 20, 2010, provides an accurate summary of the Examiner Interview and applicant affirms its contents. No agreement was reached with respect to allowable claims.

The Examiner is thanked for his time and a productive interview.

### The Rejection of Claims 1, 4, and 5 Under 35 U.S.C. § 102(b)

Claims 1, 4, and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rowe et al. (U.S. Patent No. 5826600). Withdrawal of this ground for rejection is respectfully requested because Rowe et al. does not teach every aspect of Claim 1, as amended.

Claim 1 recites a wiper comprising a tube-like container enclosing a rod having a wiper at a first end and attached to the tube-like container at a second end. Claim 1 recites, *inter alia*, a circumferential easy break-off mark scored on an exterior surface of the tube-like container. The tube-like container is configured to be broken along the easy break-off mark and separated such that the a first portion of the tube-like container, attached to the rod, is separable from a second portion of the tube-like container to expose the wiping body.

In the Office Action, Rowe et al. is cited as anticipating Claim 1. Specifically, Rowe et al. is cited as teaching an applicator assembly 10 (cited as teaching the wiper of Claim 1); an

applicator 20 (cited as teaching the rod of Claim 1); an applicator end-portion 24 (cited as teaching the wiping body of Claim 1); a casing 12 (cited as teaching the tube-like container of Claim 1); and a frangible section 18 (cited as teaching the easy break-off mark of Claim 1).

Applicant asserts that Claim 1, as amended, is not anticipated by Rowe et al. because the reference does not teach every aspect of Claim 1.

First, Rowe et al. does not teach the tube-like container recited in Claim 1. In this regard, the tube-like container of Claim 1 comprises one contiguous tube-like body defined by a first portion and a second portion separated by an easy break-off mark. Conversely, the outer casing 12 of Rowe et al. would not be characterized by one of skill in the art as being a tube-like container as recited in Claim 1. Instead, the outer casing 12 taught by Rowe et al. consists of at least four sections: a first handle section 14, a second larger receiving section 16, a substantially frustoconical-shaped end-portion 16', and a frangible section 18. Applicant particularly notes the presence of a frustoconical portion 16' of the outer casing 12 taught by Rowe et al. (giving it a wine-bottle shape) as distinguishing the outer casing 12 of Rowe et al. from the tube-like container recited in Claim 1.

Additionally, new Claim 29 recites that the first part and the second part of the tube-like container have the same uniform circular latitudinal cross section. Claim 29 further distinguishes the tube-like container of the claimed invention from the outer casing 12 of Rowe et al. because the cross section of the tube-like container is uniform along the entire longitudinal distance of the tube-like container in Claim 29; whereas the outer casing 12 of Rowe et al. has multiple sizes of latitudinal cross sections (e.g., the handle section 14 has a different cross sectional size than the second larger receiving section 16).

Second, Rowe et al. does not teach the circumferential easy break-off mark scored on an outer surface of the tube-like container, as recited in Claim 1. In this regard, the Office Action

states that the frangible section 18 of Rowe et al. teaches the recited circumferential easy break-off mark (column 2, lines 39-44, and Figures 1 and 2). Applicant respectfully disagrees. The easy break-off mark recited in Claim 1 is scored on an outer surface of the tube-like container. In Rowe et al., the frangible section 18 is a thinned section of the outer casing 12 that provides a mechanically weakened region of the outer casing 12 at which to break the outer casing 12. The easy break-off mark is distinct from the frangible section 18 of Rowe et al. for at least two reasons. First, because the easy break-off mark is scored (i.e., cut by a cutter; see application page 22, line 24), whereas the frangible section 18 of Rowe et al. is described as an entire section of the container that is substantially thinner than the other regions of the outer casing (column 2, lines 39-44). Second, the easy break-off mark is scored on an outer surface of the tube-like container, whereas the frangible section 18 of Rowe et al. is an entire section that is thinned, and thus has no taught features on the outer surface of the outer casing 12 that would teach or suggest the scored easy break-off mark of Claim 1.

The distinction between the scored easy break-off mark of Claim 1 and the frangible section 18 of Rowe et al. illustrates the advantages of the wiper of Claim 1 over that of Rowe et al. Specifically, the thin frangible section 18 of Rowe et al. renders the outer casing 12 susceptible to "film effects" that reduce the ability of the outer casing 12 to confine volatile organic material. Conversely, the easy break-off mark recited in Claim 1 is not an entire section of the tube-like container but is only a scored mark on the outer surface of the tube-like container, which minimizes the potential for film effects in the tube-like container of Claim 1.

Film effects is a term known to the those of skill in the art that refers to volatile matter traveling through a material where the gap between molecules of a polymeric material is large and the thickness of the polymeric material is small. Therefore, thin polymer walls allow volatile material to escape while thick polymer walls will better contain volatile material. A thin

polymer wall is an essential feature of Rowe et al., and given the thinness of the frangible section 18, film effects will reduce the ability of the outer casing 12 of Rowe et al. to retain volatile compounds. Specifically, the wall thickness of the frangible section 18 is stated as being between 0.003 and 0.007 inches (column 3, lines 41-45), which is a thinness of thermoplastic polymer that will be appreciated by those of skill in the art as leading to film effects and allowing for the escape of volatile organic materials. Because the tube-like container of Claim 1 does not include a thin frangible section 18, such as in Rowe et al., but instead includes the scored easy break-off mark, the tube-like container of Claim 1 allows for breaking of the container without the negative film effects of the container of Rowe et al.

Furthermore, the distinction between the easy break-off mark scored on an outer surface of the tube-like container of Claim 1 and the frangible section 18 of Rowe et al. results in practical differences when the two containers are broken open for use, as intended. Specifically, the scored easy break-off mark of Claim 1 will produce a highly concentrated stress at the break-off mark when a user breaks the outer package by gripping the two ends of the tube-like container and breaking the container off along the break-off mark. Conversely, the frangible casing 18 of Rowe et al. is an entire section of the outer casing 12, instead of the relatively thin score recited in Claim 1. Because the frangible section 18 of Rowe et al. is relatively wide, attempting to break such a frangible section 18 will not bring about a high-stress concentration and the frangible section 18 will be ripped open instead of cleanly broken. Therefore, the tube-like container of Claim 1 with an easy break-off mark will open more smoothly and cleanly than when opening of the outer casing of the container of Rowe et al. at the frangible section 18.

Therefore, the recitation of an easy break-off mark scored on an outer surface of the tube-like container of Claim 1 provides several advantages over the outer casing 12 taught by Rowe et al.

Additionally, Claim 30 has been added, which recites that the tube-like container has walls of uniform thickness. As set forth above, the frangible section 18 of the outer casing 12 of Rowe et al. has variable thickness walls, as a frangible section 18 is thinner than the other portions of the outer casing 12. Therefore, Claim 30 distinguishes the outer casing of Rowe et al.

For the reasons set forth above, applicant asserts that Claim 1 is novel in view of Rowe et al. because the reference does not teach several aspects of the claimed invention. Accordingly, applicant respectfully requests the allowance of Claim 1, and claims depending therefrom, and withdrawal of this ground for rejection. Furthermore, applicant asserts that the claimed invention is nonobvious in view of Rowe et al. because one of skill in the art would not have an apparent reason to modify Rowe et al. to arrive at the claimed invention.

New Claims 27-30

Claims 27-30 have been added and depend from Claim 1. Support for Claims 27-30 can be found throughout the application as filed, including the figures. New Claims 29 and 30 have been discussed in the remarks above. Applicant asserts that Claims 27 and 28 are novel and nonobvious for the reasons set forth above with regard to Claim 1. Accordingly, allowance of Claims 27-30 is respectfully requested.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

CONCLUSION

Applicant believes that Claims 1, 4, 5, and 27-30 are in condition for allowance. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to call the undersigned attorney at 206.695.1698.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>

*L. Rhys Lawson*

L. Rhys Lawson, Ph.D.  
Registration No. 57,869  
Direct Dial No. 206.695.1698

LRL:pag/cae

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100